

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

In the Matter of

BAF INDUSTRIES, INC. ^{1/}

Employer

and

Case 9-RC-17572

TRUCK DRIVERS, CHAUFFEURS AND
HELPERS LOCAL UNION NO. 100,
AFFILIATED WITH THE INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, AFL-CIO ^{2/}

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein called the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, ^{3/} the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction.

3. The labor organization involved claims to represent certain employees of the Employer.

^{1/} The name of the Employer appears as amended at the hearing.

^{2/} The name of the Petitioner appears as amended at the hearing.

^{3/} The Employer timely filed a brief which I have carefully considered in reaching my decision. Although given the opportunity to do so, the Petitioner failed to file a brief.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The Employer is engaged in the manufacture of automobile reconditioning products (cleaning compounds and buffing pads) at its Cincinnati, Ohio facility, the only facility involved in this proceeding, where it employs 9 production employees, 3 warehouse employees and 2 clerical employees in the unit found appropriate. The only other persons employed by the Employer at its Cincinnati facility are Terry Hornsby, plant manager, and Todd Miller, plant supervisor. ^{4/} There is no history of collective bargaining affecting any of the Employer's employees.

The Petitioner seeks to represent a unit consisting of the 14 production, warehouse and clerical employees (all of the statutory employees employed at the Cincinnati facility). The Employer agrees that the 12 production and warehouse employees should be included in any unit found appropriate but maintains, contrary to the Petitioner, that the two clerical employees should be excluded from the unit on the basis that they are office clerical employees of the type which the Board traditionally excludes from production/warehouse/maintenance units. The Petitioner contends that the clericals should be included in the unit as warehouse/plant clerical employees but is willing to proceed to an election in a unit excluding the clerical employees.

The clerical employees, Cheryl Blevins and Diana Jones, are directly supervised by Hornsby. The production and warehouse employees are directly supervised by Miller who, in turn, reports directly to Hornsby. The clericals work from 8 a.m. to 5 p.m. with an unpaid hour lunch break, while the production and warehouse employees work from 8 a.m. to 4:30 p.m. with an unpaid half hour lunch break. The wage rates for the clerical employees are similar to those of the production employees. ^{5/} The clerical employees share the same benefits, break periods and common facilities such as restrooms, break area and time clock with the production/warehouse employees. There is no record testimony of permanent transfers involving the clerical and production/warehouse employees and the evidence of temporary interchange is limited to three occasions totaling 30 hours over a 2-year period where a clerical employee performed production work. Clerical and production/warehouse employees work together about 4 days a year performing a physical count of the Employer's inventory. Clerical as well as production/warehouse employees may volunteer or be assigned to mow the grass at the Employer's facility depending on the workload of the employee selected.

All employees work within a single building approximately 210 feet from east to west and 360 feet from north to south. Eight of the production employees work in the Northwest corner of the building and the ninth production employee works in the northeast corner. The office area located in the southwest corner of the building is separated from the production/warehouse area by a set of double doors and contains separate offices for the two clerical employees and the two supervisors as well as the break area, restrooms, a lab and areas for office equipment and files.

^{4/} The parties stipulated, the record reflects and I find that Hornsby and Miller are supervisors within the meaning of Section 2(11) of the Act. Accordingly, they are excluded from the unit.

^{5/} Hornsby initially testified that the wage rates of the clerical employees were close to those of the production and warehouse employees but when pressed to quantify any difference, he estimated that they were within 10%. Hornsby testified that wage rates are directly related to an employee's length of service with the Employer. The record indicates that the employment tenure of the clerical employees is longer than that of the production and warehouse employees.

The remainder of the building consists of the warehouse, staging area and shipping/receiving dock where the warehouse employees work. The clerical employees do not normally have work related reasons to enter the production/warehouse area and the production/warehouse employees are not required to enter the office area except for two production employees who spend about 40 minutes per day in the lab testing finished product before it is packaged.

Blevins and Jones have a computer and a telephone in their respective offices. Blevins' primary job function is to electronically record information and generate documents for order processing which occupies from 50 to 75 percent of her time. Jones' primary function is the electronic data control of raw material and finished goods inventories, spending about 4 to 6 hours per day engaged in that endeavor. Blevins is assigned to answer the telephone during the first half of the workday and Jones is assigned to that task during the second half. Each is responsible for answering the telephone if the other is occupied. If an incoming call involves a customer order, the recipient of the call obtains the order information. If the call does not involve an order, Blevins or Jones directs the call to the appropriate person at the facility. Jones is responsible for greeting visitors to the Employer's facility and directing them to the appropriate person within the building. The record does not reflect the frequency of visitors nor the amount of time Jones spends dealing with them.

Upon telephonic receipt of a customer order, the information is given to Blevins who enters it into her computer and generates a printed shipping order showing the type and quantity of product to be shipped to the customer. Blevins then takes the shipping order to a basket in Miller's office where it is picked up by a warehouse employee who stages the order for shipping. In the process of staging, the warehouse employee makes handwritten notations on the shipping order indicating the quantity and batch number of the product staged. These notations are checked by the warehouse employee, double checked by Miller and the shipping order is returned to Miller's office. Miller takes the finished shipping orders back to Blevins' office where Blevins arranges for a common carrier to transport the shipment to the customer and electronically generates a bill of lading for the shipment. The Employer's customers specify the common carrier to be used for about 90 percent of the shipments. Blevins selects the common carrier for the remaining 10 percent of the shipments based on price and service reliability, subject to assistance from or veto by Hornsby. Blevins maintains a listing of customers and the common carriers available to ship to them. Blevins processes about five international orders per year in which case she generates additional statutorily required export documents and signs them as the Employer's export agent.

After an order is loaded on a common carrier vehicle by the warehouse employees, the shipping order and the bill of lading are taken to Jones who deletes the product shipped from the electronic record of finished goods inventory. The shipping order and bill of lading are retained (apparently by Jones) until the invoice is received from the Employer's headquarters in California. At that point, Jones attaches them to the invoice and files them.

Jones is responsible for maintaining the Employer's electronic records of raw material and finished goods inventories, including the conversion of raw materials to finished product and the deletion of finished product from inventory upon shipment. Information concerning conversion of raw materials to finished product is generated after finished product is filled into containers by production employees and is transmitted by work order through Miller to Jones. As previously noted, Jones receives information about shipped product after it is loaded on common carrier vehicles by the warehouse employees. The record does not reflect if or how Jones might receive information concerning raw materials received in inventory. Jones is also responsible for

ordering raw materials and office supplies. Hornsby, the plant manager, determines the levels of raw material inventories to be maintained and this information is entered into the Employer's computer system to determine the reorder level. Jones monitors the reorder levels and places orders for raw materials when inventories reach those levels. The record does not disclose the method used by Jones to order raw materials or whether her contact is directly with vendors or through a purchasing function at the Employer's California headquarters. The dollar amount of materials Jones may order is not limited, but her discretion is constrained by the necessity to avoid high levels of raw material inventories. Jones orders office supplies from a specific vendor at the request of Hornsby, Miller or Blevins.

Jones and Blevins electronically transmit shipping order information on a daily basis to the Employer's California headquarters. They fill in for each other during absences and assist each other during the course of a normal work day when both are present.

Jones, Blevins, Miller and Hornsby, unlike the production and warehouse employees, have routine access to and perform substantial work with computers, printers, fax machines and calculators. They are assigned passwords to the Employer's computer systems while the production and warehouse employees are not. One production employee occasionally uses a computer, printer and copier to print and copy product labels, while two production employees occasionally use calculators to perform lab work. Hornsby, Miller and Blevins are the only persons who have keys and security access codes to the Employer's Cincinnati facility.

The record does not contain evidence of work-related contact between Jones and the production/warehouse employees. Communication regarding the status of customer orders is normally transmitted between Blevins and the warehouse employees through Miller, but Blevins estimated that warehouse employees come to her office about 5 times monthly for a few minutes at a time to discuss order status with her. Blevins related that she had less frequent direct contact with a production employee responsible for product labels.

Matters involving time cards and paychecks at the Cincinnati facility are handled by Miller and Hornsby. Blevins and Jones do not have access to such information and are not otherwise involved in such matters. Hornsby maintains employees' personnel records under lock in his office with Blevins and Jones being denied access to that information. Hornsby has a computer in his office with a dedicated fax line. Hornsby testified that Jones and Blevins do not perform work directly for him, explaining that he drafts his own memos and does his own faxing.

ANALYSIS:

Section 9(a) of the Act only requires that a unit sought by a petitioning labor organization be an appropriate unit for purposes of collective bargaining, and there is nothing in the statute which requires that the unit for bargaining be the only appropriate unit, or the ultimate unit or even the most appropriate unit. *Morand Brothers Beverage Company*, 91 NLRB 409, 418 (1950). Moreover, the unit sought by the petitioning labor organization is always a relevant consideration and a union is not required to seek representation in the most comprehensive grouping of employees unless an appropriate unit compatible to that requested does not exist. *Overnite Transportation Company*, 322 NLRB 723 (1996); *Purity Food Stores*, 160 NLRB 651 (1966).

The appropriateness of a given unit is governed by community of interest principles. In analyzing community of interest among employee groups, the Board considers bargaining

history; functional integration; employee interchange and contact; similarity of skills, qualifications and work performed; common supervision; and similarity in wages, hours, benefits and other terms and conditions of employment. *Armco, Inc.*, 271 NLRB 350 (1984); *Atlanta Hilton & Towers*, 273 NLRB 87, 89 (1984); *J.C. Penney Co.*, 328 NLRB 766 (1999).

The parties are in agreement that all production/warehouse employees are properly included in the Unit. However, they disagree with respect to the unit placement of the two clerical employees. The Petitioner would include them as plant/warehouse clericals while the Employer would exclude them as office clerical employees. The sole issue to be determined is whether the two employees in dispute are plant/warehouse or office clerical employees.

As the Employer notes in its brief, under Board policy, office clerical employees are customarily excluded from production and/or maintenance units. *Massachusetts Electric Company*, 248 NLRB 155, 157 (1980); *Hygeia Coca-Cola Bottling*, 192 NLRB 1127, 1129 (1971); *Westinghouse Electric Corporation*, 118 NLRB 1043, 1047 (1957) on the other hand, plant (or warehouse) ^{6/} clerical employees are customarily included in such units. *Armour and Company*, 119 NLRB 623, 625 (1957); *John N. Hanson Co.*, 293 NLRB 63, 64 (1989). ^{7/} In *Mitchellace, Inc.*, 314 NLRB 536 (1994), the Board noted that the distinction between office clerical employees (normally excluded from production and maintenance units) and plant clerical employees (normally included in production and maintenance units) is rooted in community of interest concepts.

Clerical employees who perform work related to and functionally integrated with the work of production (or warehouse) employees, such as order processing, inventory control and material ordering, are typically found to be plant clerical employees. *Hamilton Halter Co.*, 270 NLRB 331 (1984); *Sears Roebuck and Co.*, 220 NLRB 1224 (1975); *John N. Hansen Co.*, 293 NLRB 63, 65 (1989). Clerical employees, who perform more administrative functions, involving such things as reception, personnel matters, payroll, accounting, billing and correspondence, are typically deemed to be office clerical employees because their work is less directly related to or functionally integrated with the work of production employees. *Dunham's Athleisure Corp.*, 311 NLRB 175, 176 (1993).

Blevins is responsible for entering order information into the computer system and generating shipping orders from that information. The shipping orders are used by the warehouse employees to determine which products from inventory to prepare for shipment. The functional integration of Blevins' work with that of the warehouse employees is highlighted by the fact that the warehouse employees make handwritten notations on the shipping orders prepared by Blevins. Blevins' preparation of bills of lading also relates to the warehouse employees' functions of preparing orders for shipment. Jones, like Blevins, is involved in receiving customer orders by telephone which is an initiating step in the Employer's order processing function. Jones' primary responsibility, however, relates to inventory control in which she maintains the Employer's electronic inventory data and orders raw materials. Thus,

^{6/} In terms of these policy considerations involving office clerical and plant clerical employees, the Board does not distinguish between plant clerical employees (those whose functions relate to a production process) and warehouse clerical employees (those whose functions relate to warehousing operations). See *Sears, Roebuck and Co.*, 222 NLRB 476, 477 (1976), where the Board referred to employees performing warehouse clerical functions as plant clerical employees.

^{7/} The Board has stated that it does not have any per se rules to include or exclude any classification of employees in any unit and that community of interest must be examined. Cf. *Airco, Inc.*, 273 NLRB 348 (1984).

Jones' functions relate to production by insuring that sufficient raw materials are available and tracking the conversion of raw material to finished product. Her function also relates to the warehousing function to the extent that she maintains a record of finished product stored in the warehouse available for shipment. It is apparent that the primary functions of Blevins and Jones involve order processing, inventory control and material ordering. Accordingly, I conclude that their job functions are functionally integrated with the work of the production/warehouse employees and are more akin to those of plant clerical employees than they are to those of office clerical employees. *Hamilton Halter*, supra; *Sears*, supra; *Hansen*, supra.

Although the Employer's clerical employees perform the reception function (typically office clerical) of greeting visitors and answering the telephone, the record shows that their reception functions are only incidental to their primary duties in support of the production/warehouse operations (typically plant clerical). Moreover, other typically office clerical duties involving correspondence, payroll and personnel matters at the Employer's Cincinnati facility are not performed by the clerical employees but are done by supervision. The record does not disclose the identity of the persons who perform accounting and billing functions required by the Employer's Cincinnati operations or whether such duties are even carried out at the Cincinnati facility. Indeed, the Employer apparently does not employ anyone at its Cincinnati facility whose primary job functions are typical of office clerical employees.

In its brief, the Employer relies significantly on *Avecor, Inc.*, 309 NLRB 73, 74-75 (1992), in support of its argument that the work of Blevins and Jones is office clerical in nature and is not functionally integrated with that of the production/warehouse employees. In *Avecor*, the Board found that the order entry clerk "received the product orders that the customers telephoned in, and prepared the paperwork using office equipment and a digital computer. She also generated shipping paperwork for orders and supplied order information to the production manager and shipping information to the shipping department." The Board found that the order entry clerk in *Avecor* was principally performing work typically accomplished by office clerical employees, such as preparing shipping papers and doing typing, which it found to be incidental to, and not an integral part of, the production process. After finding that the order entry clerk performed essentially office clerical duties, the Board examined her community of interest with undisputed office clerical employees as compared to the interest she shared with the production employees and found on the basis of community of interest factors, such as work location, contact, wages and hours; that the order entry clerk was an office clerical employee. It appears, therefore, that in *Avecor*, the Board found that the order entry clerk was an office clerical employee because she performed essentially office functions and shared a closer community of interest with undisputed office clerical employees than she did with the production employees.

Avecor is distinguishable from the subject case. Here the Employer does not employ clerical employees at its Cincinnati facility whose primary job function is to perform the more typical administrative office clerical functions. Thus, there are no undisputed office clerical employees with whom the community of interest of Blevins and Jones might be compared. The facts in the instant matter are more analogous to those presented in *American Optical Corporation*, 236 NLRB 1046 (1978), where all of the employer's office employees at its Fresno location performed order processing clerical functions which were found by the Board to be integral to the production process, while the more typical administrative office clerical functions such as bookkeeping and payroll were performed at another location. In *American Optical*, the Board found that the Fresno office employees were more akin to plant clericals than they were to office clericals.

Having concluded that the work of the Employer's clerical employees is functionally integrated with that of its production/warehouse employees, I further note that the clerical and production/warehouse employees share the same benefits and that their wages and working hours are very similar. Although their immediate supervision is different, they share the common overall supervision of Hornsby. See *American Optical*, supra. These factors tend to suggest that the Employer's clerical employees' community of interest with the production/warehouse employees is such that they are more akin to plant clerical employees than office clerical employees.

I also note that the Employer's clerical employees work in an office using office equipment while the production/warehouse employees generally do not do so. It would appear, however, that the office at the Employer's Cincinnati facility is more typical of a plant office performing functions in support of production/warehousing operations, as was the case in *American Optical*, supra, than it is of an office where administrative functions are performed as was the case in *Avecor*, supra. In any event, the Board in *John N. Hansen*, supra, noted that the fact that a clerical employee works in an office using office equipment does not preclude the employee's inclusion in a warehouse unit.

The minimal amount of work related contact and interchange are factors that militate against a conclusion the Employer's clericals are of the plant clerical type. Although contact and interchange between the two groups cannot be characterized as non-existent, the record reflects that the amount of contact and interchange is so minimal as to render it insignificant. This lack of contact and interchange, when viewed in light of the functional integration and similarity of wages, hours and benefits, presents a close question as to the clerical employees' community of interest with the production/warehouse employees and whether they are more akin to plant clerical employees or office clerical employees.

I conclude, however, on balance, that the two clerical employees job functions are more typical of plant clerical employees and their wages, benefits, hours and working conditions are similar to those of the production/warehouse employees. I particularly find noteworthy that there are no groups of employees, other than the production/warehouse employees, with whom the Employer's clerical employees' community of interest might be aligned. In my view, these circumstances outweigh the lack of significant contact and interchange between the clerical employees and the production/warehouse employees and distinguish the facts of the instant case from those in cases such as *Avecor*, supra, where the Board was required to analyze whether disputed clerical employees' interests were more closely aligned with production employees than they were with other undisputed office clerical employees.

The remaining precedents relied upon by the Employer in its brief are distinguishable. In *Cooper Industries*, 328 NLRB 145, 184 (1999), an administrative law judge found that clerical employees who reported to the cost accounting manager, picked up production tickets and transcribed information from those tickets did not share a community of interest with production and maintenance employees. In *Cooper*, however, there was no finding as to whether the work of the clericals was functionally integrated with that of the production employees and it would appear, based on their supervision, that they performed accounting functions more typical of office clerical employees. In *PECO Energy Co.*, 322 NLRB 1074, 1090 (1997), the Board was unable to determine the status of clerical employees who performed some functions relating to the production process and voted them subject to challenge. In *PECO*, unlike the instant matter, the employer also employed undisputed office clerical employees who were excluded from the unit. The clerical employees at issue in *Weldun International*, 321 NLRB 733, 734-

735 (1996); *Cook Composites & Polymers Co.*, 313 NLRB 1105 (1994); *Prather's, Inc.*, 227 NLRB 1229 (1977), did not perform work which was functionally integrated with other unit employees to the same extent as the clerical employees here. The clerical employees in *Power Inc.*, 311 NLRB 599, 607- 608 (1993), in addition to performing some work arguably related to the production process also engaged in administrative work such as payroll, unemployment claims, worker's compensation matters, licensing and royalty documents, processing invoices and paying bills, which are typical office clerical functions. Thus, in *Power, Inc.*, there was no finding, as in the instant matter, that the primary responsibilities of the clerical employees were functionally integrated with the production process. The EDP employees in *Continuous Curve Contact Lenses*, 236 NLRB 1330, 1332 (1978), were found to be office clerical employees on the basis, among other things, that they worked in offices separated from production employees and which were frequently used by undisputed office clerical employees excluded from the unit by agreement of the parties. Thus, in *Continuous Curve*, unlike here, it was necessary for the Board to compare the interests of the disputed clerical employees with undisputed office clerical employees in addition to analyzing their interests with production employees. Some of the clerical employees at issue in *Nuturn Corporation*, 235 NLRB 1139 (1978), performed accounting functions unrelated to the production process and all of the disputed clericals in that case worked in an office with undisputed office clerical employees.

Based on the foregoing, the record as a whole and careful consideration of the arguments of the parties at the hearing and in the Employer's brief, I find that Cheryl Blevins and Diana Jones are plant clerical employees who share a substantial community of interest with the production/warehouse employees to warrant their inclusion in the unit. Accordingly, I shall include them in the unit. I shall, therefore, direct an election among the employees in the following unit:

**All production, warehouse and plant clerical employees
employed by the Employer at its 6171 Interstate Circle,
Cincinnati, Ohio facility, excluding office clerical employees
and all professional employees, guards and supervisors as
defined in the Act.**

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective

bargaining purposes by **Truck Drivers, Chauffeurs and Helpers Local Union No. 100, affiliated with the International Brotherhood of Teamsters, AFL-CIO.**

LIST OF ELIGIBLE VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters using full names, not initials, and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB No. 359 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision **2** copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in Region 9, National Labor Relations Board, 3003 John Weld Peck Federal Building, 550 Main Street, Cincinnati, Ohio 45202-3271, on or before **September 26, 2001**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **October 3, 2001**.

Dated at Cincinnati, Ohio this 19th day of September 2001.

/s/ **Richard L. Ahearn**

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